

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Douglas Dynamics, LLC, d/b/a/ Western
Products,

Plaintiff,

v.

B&P SUPPLY, INC.,

Defendant

CIVIL ACTION
Docket No: 04-cv-11467

JOINT STATEMENT REGARDING PRETRIAL MATTERS

Pursuant to Local Rule 16.1 and the Court's Notice of Scheduling Conference And Additional Matters dated December 3, 2004, Plaintiff Douglas Dynamics, LLC, d/b/a/ Western Products ("Western") and Defendant B&P Supply, Inc. ("B&P") file this Joint Statement Regarding Pretrial Matters.

I. Statement Pursuant to Rule 16.1(B)

Counsel for plaintiff and counsel for defendant state that they have conferred, pursuant to Rule 16.1(B), for the purpose of (1) preparing an agenda of matters to be discussed at the scheduling conference; (2) preparing a proposed pretrial schedule for the case that includes a plan for discovery; and (3) considering whether they will consent to trial by magistrate judge.

II. Statement Pursuant to Rule 16.1(C)

Western has submitted a settlement demand to B&P pursuant to Local Rule 16.1(C). B&P has responded to the demand. The parties are engaged in discussions regarding settlement.

III. Joint Statement Pursuant to Rule 16.1(D)

A. Brief Summary Of The Parties' Positions

1. Plaintiff's Position

As stated in the Complaint, Western manufactures and sells snow and ice removal equipment and accessories such as snowplows and snowplow assemblies. During the period from November 2003 through March 2004, Western sold and delivered to B&P, and B&P purchased and accepted from Western, snow and ice removal equipment and accessories with a sales price of \$118,727.12. The terms of the sales contracts between Western and B&P required payment in full within 30 days of the invoice date, and further provided for a 1.5% service charge per month on amounts overdue and unpaid. Despite repeated demands by Western that B&P make payment on the outstanding invoices, B&P refused to make any such payment to Western. Pursuant to the terms of sale that governed the purchases made by B&P, interest continues to accrue on the amount of \$118,727.12 at the rate of 1.5% per month. It is Western's position that B&P breached its contracts with Western for the purchase of the snow and ice removal equipment and accessories by failing and refusing to make payment to Western of the outstanding amounts due.

2. Defendant's Position

Western breached its agreement/contract with B&P by its failure to deliver product/inventory in a timely fashion. The delays cost B&P, among other things, loss of good will, loss of opportunity, and thousands of dollars in lost sales. Additionally, Western wrongfully and/or unilaterally terminated its distributorship/franchise with B&P, resulting in thousands of dollars in lost sales, lost opportunity and other damages. The termination of the franchise/distributorship has placed B&P in severe financial distress.

B. Discovery

The parties believe that the discovery permitted by Local Rule 26.1(C) is sufficient.

C. Proposed Discovery/Pretrial Schedule

Counsel for the parties have conferred regarding the proposed discovery/pretrial schedule.

1. Plaintiff's Position

It is Western's position that there is no need for a prolonged discovery period because there are very few facts in dispute. Accordingly, Western proposes the following discovery/pretrial schedule:

January 20, 2005	Deadline for initial disclosures pursuant to Fed.R.Civ.P. 26(f)
February 4, 2005	Deadline for designating experts in accordance with Fed.R.Civ.P. 26(a)(2)(A) and exchanging any expert reports
March 7, 2005	Deadline for exchanging all rebuttal expert reports, if any, in accordance with Fed.R.Civ.P. 26(a)(2)(C)
April 1, 2005	Deadline to complete all discovery
April 30, 2005	Deadline for filing all dispositive motions

2. Defendant's Position

Defendant's counsel is not asking for "prolonged" discovery. The deadlines suggested by Plaintiff's counsel are entirely unrealistic, and impossible for defense counsel to achieve. Counsel for the Defendant has just filed an Appearance in this case and is still "coming up to speed" on same. Accordingly, counsel for the Defendant requests the following discovery/pre-trial schedule:

March 1, 2005	Deadline for initial disclosures pursuant to Fed.R.Civ.P. 26(f)
May 1, 2005	Deadline for designating experts under Fed.R.Civ.P. 26 (a)(2)(A) and exchanging any expert reports

June 1, 2005 Deadline for exchanging all rebuttal expert reports, if any, in accordance with Fed.R.Civ.P. 26 (a)(2)(C)

July 1, 2005 Deadline to complete all discovery

August 1, 2005 Deadline for filing all dispositive motions

D. Certifications Pursuant to Local Rule 16.1(D)(3)

Counsel for the parties certify they have conferred with their clients (a) with a view to establishing a budget for the costs of conducting the full course, and various alternative courses of the litigation; and (b) to consider the resolution of the litigation through the use of alternative dispute resolution programs, such as those outlined in Local Rule 16.4.

The representations of Plaintiff and Defendant required by Local Rule 16.1(D)(3) will be filed under separate cover.

E. Trial By Magistrate Judge

The parties do not consent to trial by magistrate judge.

Dated: December 31, 2004

/s/ Christopher R. Drury
 Christopher R. Drury, B.B.O 181400
 cdrury@pierceatwood.com

Jeffrey M. White, Maine Bar No. 1287
 jwhite@pierceatwood.com

PIERCE ATWOOD
 One Monument Square
 Portland, ME 04101
 207-791-1100

*Attorneys for Plaintiff Douglas Dynamics, LLC
 d/b/a/ Western Products*

/s/ Jack E. Houghton
 Jack E. Houghton, Jr., B.B.O. # 241040
jhoughtonjr@aol.com

Law Offices of Jack E. Houghton, Jr.
 78 Bartless Avenue
 Pittsfield, MA 01201
 (413) 447-7385

Attorney for Defendant B&P Supply, Inc.

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CERTIFICATE OF SERVICE

I hereby certify that on December 31, 2004, I electronically filed the Joint Statement Regarding Pretrial Matters with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following:

Jack E. Houghton, Jr.
jhoughtonjr@aol.com

Law Offices of Jack E. Houghton, Jr.
78 Bartless Avenue
Pittsfield, MA 01201
(413) 447-7385

/s/ Christopher R. Drury
Christopher R. Drury
cdrury@piercatwood.com

PIERCE ATWOOD LLP
One Monument Square
Portland, ME 04101
(207) 791-1100

*Attorney for Plaintiff Douglas Dynamics,
LLC d/b/a/ Western Products*